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IN THE COURT OF APPEALS OF INDIANA

JACOB R. PATTERSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 70A04-0606-CR-347
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE RUSH SUPERIOR COURT
The Honorable David E. Northam, Judge
Cause No. 70D01-0501-FD-021

February 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Jacob R. Patterson appeals his convictions for Conspiracy to Commit Theft,[1] a class D felony, and Attempted Theft,[2] a class D felony. Specifically, Patterson claims that evidence seized during the search of a vehicle in which he was a passenger was improperly admitted at trial. Finding no error, we affirm the judgment of the trial court.

FACTS

Sometime after midnight on January 28, 2005, Rush County Sheriff's Deputy William Chandler was on patrol near the Royster-Clark agri-chemical facility. Deputy Chandler was patrolling this area because a quantity of anhydrous ammonia had been stolen from Royster-Clark sometime in the past forty hours. Anhydrous ammonia is a substance that is used in the manufacture of methamphetamine. At some point, Deputy Chandler noticed a van near the business. He reported his discovery of the vehicle to Officer Steve Houston and told him that the van had appeared "just practically out of nowhere." Tr. p. 23, 27.

When Officer Houston arrived at the scene, he saw the van slow down near some trees, turn around in a driveway, and stop again. At some point, Officer Houston saw the door of the van open and shut. He then noticed an individual enter the vehicle and saw the van leave at a high rate of speed and run a stop sign. Id.

Thereafter, Officer Houston stopped the van and, as he approached the vehicle, a man in camouflage clothing began walking to the front of the van.

[1] Ind. Code § 35-41-5-2; Ind. Code § 35-43-4-2.

[2] I.C. § 35-41-5-1; I.C. § 35-43-4-2.

Officer Houston radioed for assistance and ordered the man to walk toward him. Officer Houston decided to treat the encounter as a "high risk unknown stop" or "felony stop" based upon the possibility that the occupants of the van had stolen anhydrous ammonia and the likelihood that they might be armed. Tr. p. 30, 39, 44, 184. The individual who Officer Houston stopped was identified as Aaron Gallimore, the owner of the van. Gallimore was patted down for weapons and Patterson, who was a passenger in the van, was ordered from the vehicle. Patterson was also patted down for weapons and secured in handcuffs. Finally, the officers ordered Patterson's wife, Mary, who was the driver, from the vehicle. The officers found no weapons or contraband during the initial pat downs, and all three suspects were advised of the Miranda[3] warnings.

Officer Houston then approached the van and "stuck [his] head in for a quick search of people or any visible weapons." Id. at 35, 186. At that point, Officer Houston noticed a strong odor of anhydrous ammonia emanating from the vehicle. He also observed some gloves on the floor of the van that were covered with ammonia. The gloves contained a quantity of marking dye, a substance that is added to anhydrous ammonia to prevent the theft of that substance. It was ultimately determined that the dye on the gloves was the same color of the marking dye that Royster-Clark used in its anhydrous ammonia. The Pattersons and Gallimore were subsequently arrested and transported to jail.

Because of inclement weather, the location of the van, and darkness, the officers had the van towed to the Sheriff's Department for an inventory search of the vehicle. During the

[3] Miranda v. Arizona, 384 U.S. 436 (1966).

search, the police officers seized the gloves, a set of walkie-talkies, and a backpack that contained tools and a bicycle inner tube with ends that had been cut. It was established that bicycle inner tubes are the most common means of retrieving anhydrous ammonia from a commercial tank. The tools that were recovered included a pipe wrench, claw hammer, some allen wrenches, an adjustable wrench, two carpenter knives, vice grips, and a flat head screwdriver.

After Patterson was charged with the above offenses, he filed a pretrial motion to suppress claiming that his arrest, the search of the van, and the subsequent seizure of the items from the van were improper. The trial court denied the motion to suppress, and following a jury trial on April 7, 2006, Patterson was found guilty as charged. Patterson now appeals.

DISCUSSION AND DECISION

I. Standard of Review

Patterson contends that his conviction must be reversed because the police officers improperly searched the van, which violated his rights under the Fourth Amendment to the United States Constitution.[4] Specifically, Patterson claims that because the initial pat down search revealed no weapons or contraband, the officers were not justified in searching the

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[4] Although Patterson refers to a violation of his rights under Article I, Section 11 of the Indiana Constitution, he presents no separate argument with respect to the state constitution. Thus, any separate state constitutional claim is waived because of his failure to make a cogent argument under that provision. See Francis v. State, 764 N.E.2d 641, 646-47 (Ind. Ct. App. 2002) (stating that failure to provide a separate analysis under the state constitution separate from the federal analysis waives a state constitutional claim).

van. As a result, Patterson maintains that all evidence seized during the search should have been excluded at trial.

We review a trial court's determination as to the admissibility of evidence for an abuse of discretion, and we will reverse only when the decision is clearly against the logic and effect of the facts and circumstances. Smith v. State, 754 N.E.2d 502, 504 (Ind. 2001). Additionally, our standard of review of rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial objection. Ackerman v. State, 774 N.E.2d 970, 974-75 (Ind. Ct. App. 2002), trans. denied. We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling. Collins v. State, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), trans. denied. However, we must also consider the uncontested evidence favorable to the defendant. Id.

II. Search and Seizure

Notwithstanding Patterson's challenges to his arrest and search of the van, the State argues that Patterson does not have standing to challenge the search of the van because he had no reasonable expectation of privacy in the vehicle. This court has determined that an individual's rights against unreasonable search and seizure under the Fourth Amendment are personal. Best v. State, 821 N.E.2d 419, 424 (Ind. Ct. App. 2005), trans. denied. To challenge a search as unconstitutional under the Fourth Amendment, a defendant must have a legitimate expectation of privacy in the place that is searched. Id. In other words, a defendant has no standing to object to the search of another person's property. Chappel v. State, 591 N.E.2d 1011, 1016 (Ind. 1992). Moreover, the burden is on the defendant

challenging the constitutional validity of a search to demonstrate that he had a legitimate expectation of privacy in the premises searched. State v. Friedel, 714 N.E.2d 1231, 1236 (Ind. Ct. App. 1999).

We also note that passengers who lack a possessory or property interest in the vehicle that is searched do not have a legitimate expectation of privacy and therefore lack standing to challenge a search. Id. Although this court has determined that "Every person in a motor vehicle has a right to contest the stop of the vehicle in which he is traveling as either a driver or passenger," Osborne v. State, 805 N.E.2d 435, 439 (Ind. Ct. App. 2004) (citing Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979)) (emphasis added), we declined to extend this principle to a subsequent search of the vehicle where a passenger has no possesory or property interest in the vehicle. Moreover, our Supreme Court has declined to adopt an "automatic standing" rule which would confer automatic standing on individuals accused of crimes where possession was both an element of the crime and a factor necessary for standing to challenge a warrantless search. Livingston v. State, 542 N.E.2d 192, 194 (Ind. 1989); see also State v. Lucas, No. 73A01-0512-CR-570, slip op. at 6 n.3 (Ind. Ct. App. Jan. 17, 2007).[5]

As the prosecutor pointed out during the hearing on Patterson's motion to suppress, the uncontradicted evidence established that Patterson was merely a passenger in the van. Tr. p. 62. Gallimore owned the van, and Patterson had no ownership interest or expectation of

[5] The United States Supreme Court repudiated the "automatic standing" rule for possessory crimes in United States v. Salvucci, 448 U.S. 83 (1980).

privacy in it. As a result, Patterson lacked standing to challenge the propriety of the search of the van. Thus, Patterson's motion to suppress was properly denied on this basis.

Irrespective of Patterson's lack of standing to challenge the search of the van, we note that the police acted reasonably in these circumstances. The Fourth Amendment to the U.S. Constitution, applicable to the states under the Fourteenth Amendment, requires that searches of private property be reasonable and authorized by a properly issued warrant. Lyles v. State, 834 N.E.2d 1035, 1043 (Ind. Ct. App. 2005), trans. denied. Searches made without a warrant are per se unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions. Id.

An investigatory stop is a valid exception to the warrant requirement recognized by the United States Supreme Court in Terry v. Ohio, 392 U.S. 1 (1968). In Terry, it was established that a police officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when, based on a totality of the circumstances, the officer has a reasonable, articulable suspicion that criminal activity is afoot. The reasonable suspicion requirement is satisfied where the facts known to the officer at the moment of the stop, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe that criminal activity has occurred or is about to occur. Lyons v. State, 735 N.E.2d 1179, 1183-1184 (Ind. Ct. App. 2000). Additionally, when a Terry stop occurs, the investigating officer is entitled to take reasonable steps to insure his own safety including ordering a detainee to exit the vehicle. Bentley v. State, 846 N.E.2d 300, 308 (Ind. Ct. App. 2006), trans. denied. Also, when a vehicle has been properly stopped for investigative

purposes, if the officer reasonably believes that he or others may be in danger, he may conduct a limited search of the automobile's interior for weapons without first obtaining a search warrant. State v. Dodson, 733 N.E.2d 968, 971 (Ind. Ct. App. 2000). Moreover, the warrant requirement becomes inapplicable when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment. Holder v. State, 847 N.E.2d 930, 937 (Ind. 2006).

In this case, it is apparent that the initial traffic stop developed into an investigatory stop when Officer Houston observed Gallimore approaching the van on foot wearing camouflage. Tr. p. 30, 39, 44, 184. Moreover, the evidence supports Officer Houston's reasonable suspicion to conduct an investigation in light of the van's presence near the recently-burglarized agri-chemical facility late at night and Officer Houston's observation of the van stopping to pick up another individual who had been traveling on foot. Tr. p. 23-28, 40, 182-83.

Further investigation was warranted after Officer Houston looked into the van, smelled anhydrous ammonia—a substance that is used in the manufacture of methamphetamine—and discovered gloves that contained the ammonia and marking dye. See Holder, 847 N.E.2d at 939-40 (identifying a number of cases holding that exigent circumstances are present justifying a warrantless search where the police observed methamphetamine odors emanating from a residence). And, contrary to Patterson's assertion that there was "no justification for . . . searching the van," appellant's br. p. 9, the officers could have validly searched the van as an inventory search or as a search incident to an

arrest. See Leitch v. State, 736 N.E.2d 1284, 1286 (Ind.Ct.App.2000) (holding that upon a lawful custodial arrest, a police officer may search the passenger compartment of a vehicle).[6] For all of these reasons, we conclude that the trial court properly admitted the items seized from the van at trial.

The judgment of the trial court is affirmed.

DARDEN, J., and ROBB, J., concur.

[6] Patterson makes no argument as to the propriety of the inventory search.